**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE S.SIRI JAGAN**

**FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929**

**WP(C).No. 28543 of 2006(W)**
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**PETITIONER:**
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**C.A.GIREESKUMAR, PHYSICAL EDUCATION TEACHER,**
**KAVUMTHARA A.U.P.SCHOOL, KOZHIKODE,**
**AMBA NIVAS, KAVIL P.O.,**
**KOZHIKODE DISTRICT.**

**BY ADV. SRI.P.RAVINDRAN**

**RESPONDENTS:**
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1. **STATE OF KERALA,**
   **REP.BY ITS SECRETARY, GENERAL EDUCATION DEPARTMENT,**
   **SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DIRECTOR OF PUBLIC INSTRUCTIONS,**
   **THIRUVANANTHAPURAM.**

3. **THE MANAGER,**
   **KAVUMTHARA A.U.P. SCHOOL, KAVIL P.O.,**
   **NADUVANNUR, KOZHIKODE.**

**BY ADV. SRI.R.K.MURALEEDHARAN for R3**
**BY SR.GOVERNMENT PLEADER SRI. T.T. MUHAMOOD**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

*KSS*

**WPC.NO.28543/2006 W**

**APPENDIX**

**PETITIONER'S EXHIBITS:**

**EXT.P1:** **COPY OF THE APPOINTMENT ORDER DTD. 1/11/91.**

**EXT.P2:** **COPY OF THE ORDER REJECTING THE APPROVAL DTD. 16/01/1992.**

**EXT.P3:** **COPY OF THE APPOINTING ORDER DTD. 30/06/19977.**

**EXT.P4:** **COPY OF THE GOVT. ORDER DTD. 14/03/1991.**

**EXT.P5:** **COPY OF THE GOVT.ORDER DTD. 7/05/92.**

**EXT.P6:** **COPY OF THE ORDER DTD. 6/04/2000.**

**EXT.P7:** **COPY OF THE GOVT.ORDER DTD. 4/10/2004.**

**EXT.P8:** **COPY OF THE REPRESENTATION PREFERRED BY THE 3RD RESPONDENT DTD. 15/01/2005.**

**EXT.P9:** **COPY OF THE ORDER DTD. 13/06/2006.**

**EXT.P10:** **COPY OF THE APPLICATION DTD.21/07/2006.**

**EXT.P11:** **COPY OF THE LETTER DTD. 2/08/2006.**

**EXT.P12:** **COPY OF THE COMMUNICATION DTD. 31/08/2005.**

**EXT.P13:** **COPY OF THE COMMUNICATION DTD. 07/12/05.**

**EXT.P14:** **COPY OF THE COUNTER SIGNATURE BY THE CHIEF MINISTER AND EDUCATION MINISTER.**

**EXT.P14(A):** **COPY OF THE COUNTER SIGNATURE BY THE SECRETARY OF EDUCATION MINISTER.**

**EXT.P14(B):** **COPY OF THE COUNTER SIGNATURE BY THE FINANCIAL PRINCIPLE SECRETARY.**

**EXT.P14(C):** **COPY OF THE COUNTER SIGNATURE BY THE CHIEF MINISTER.**

**3RD RESPONDENT'S EXHIBIT:**

**EXT.R3(A):** **COPY OF THE REQUEST MADE BY THE PARENTS TEACHER'S ASSOCIATION DTD. 1/01/05.**

**/TRUE COPY/**

**P.A.TO JUDGE**

*KSS*

**S. SIRI JAGAN, J.**

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**WP(C).No. 28543 OF 2006 W**

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**Dated this the 26th October, 2007.**

**JUDGMENT**

The petitioner was originally appointed as Physical Education Teacher in the Kavumthara A.U.P. School, which is an aided school. In 1991, as per Ext.P1 order of appointment, educational authorities declined approval for that appointment, against which the Manager filed a revision which was pending till 1997. In 1997 that revision was dismissed. The petitioner, in anticipation of favourable orders continued in service till the disposal of the revision petition. After the revision petition was dismissed, the petitioner discontinued his service in the Kavumthara A.U.P. School and accepted appointment in the P.T.M.Yatheemkhana High School, Edappalam, which appointment was approved and he is continuing in service in that school. While so, the Government took a policy decision in accordance with the national education policy to have at least one physical education teacher in every school where there are more than 500 students. The petitioner submits that in accordance with the said policy decision similar appointments have been approved as is evident from Exts.P5, P6 and P7 orders as also Ext.P4 G.O. In the

light of the above orders the third respondent Manager approached the government for a request to transfer the petitioner to the Kavumthara A.U.P. School, in continuation of his earlier appointment from 1991-97, without financial liability to the government. By Ext.P9 order petitioner was informed that his request has been rejected by the Government in view of the fact that there is already a sewing teacher working in the school and therefore another specialised teacher cannot be appointed in that School. Petitioner's brother filed Ext.P10 application for copies of the orders in this regard. Pursuant to that the petitioner was supplied with Exts.P12 to P14 (a) to(c) documents, under cover of Ext.P11 letter. The petitioner points out that Ext.P14 would show that the Government Secretary, Chief Minister and Minister for Education had together taken a decision that the request of the Manager can be granted on condition that in the consequent vacancy arising in the School, where the petitioner is working now, only a protected teacher would be appointed. In view of Ext.P14(a) note, the matter was forwarded to the Finance Department, disagreed the same. By Ext.P14(c) the Chief Minister

requested the Finance Minister to consider the case of the petitioner as a special case and approve the proposal. The petitioner would submit that between Ext.P14 series and Ext.P9 there is no government order rejecting the request of the Manager of the Kavumthara A.U.P. School and therefore Ext.P9 is bad in law. In the above circumstances the petitioner seeks a direction to the government to pass appropriate orders in accordance with Ext.P14 and P14(c).

2. The second respondent has filed a counter affidavit reiterating what is stated in Ext.P9. However, no answer is forthcoming, as to whether there is any order in between Exts,.P14 and P9, justifying Ext.P9.

3. The learned counsel for the petitioner points out that in Ext.P10 as item No: 10, the petitioner had specifically requested for a photostat copy of the decision of the Chief Minister between 3.5.2006 and Ext.P9. The said item No: 10 has been answered in Ext.P11 stating that no decision as mentioned in item No:10 of Ext.P10. Therefore Ext.P9 is not supported by a G.O passed in this regard.

As such Ext.P9 is not in accordance with the decision taken in Ext.P14 series. In the above circumstances the government is bound to pass an order in accordance with Ext.P14 series. Such an order would be passed within a period of one month from the date of receipt of a copy of this judgment .

Writ petition is disposed of accordingly.

**S. SIRI JAGAN**
**Judge**

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